

1       UNITED STATES DISTRICT COURT  
2       NORTHERN DISTRICT OF NEW YORK  
3       - - - - -  
4       MELISSA TROSTLE,  
5    Plaintiff,  
6    - against - Civil No: 1:13-CV-0709  
7       THE STATE OF NEW YORK,  
8       THERESA KNAPP-DAVID, AND  
9       DOUG BOTSFORD,  
10      Defendants.  
11      - - - - -  
12      DEPOSITION of Defendant, by its Agent, DARREN  
13      AYOTTE, held on the 17th day of October 2014, commencing  
14      at 3:21 p.m., at the Law Offices of Elmer Robert Keach,  
15      III, P.C., One Pine West Plaza, Suite 109, Washington  
16      Avenue Extension, Albany, New York 12205-5531, before  
17      Jeanne O'Connell, Registered Professional Reporter and  
18      Notary Public in and for the State of New York.  
19  
20  
21  
22      NOV 10 2014  
23

ORIGINAL

1 APPEARANCES:

2 For the Plaintiff:

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6 For the Defendants:  
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## 1                   S T I P U L A T I O N S

2 It is hereby stipulated and agreed by  
3 and between the attorneys for the respective  
parties hereto that:

4 All rights provided by the C.P.L.R.,  
5 and Part 221 of the Uniform Rules for the  
Conduct of Depositions, including the right  
to object to any question, except as to form, or to move  
6 to strike any testimony at this examination is reserved;  
and in addition, the failure to object to any question  
7 or to move to strike any testimony at this examination  
shall not be a bar or waiver to make such motion at, and  
8 is reserved to the trial of this action.

9 This deposition may be sworn to by the  
10 witness being examined before a Notary Public other than  
the Notary Public before whom this examination was  
begun, but the failure to do so or to return the  
11 original of this deposition to counsel, shall not be  
deemed a waiver of the rights provided by Rule 3116 of  
12 the C.P.L.R., and shall be controlled thereby.

13 The filing of the original of this  
deposition is waived.

14 IT IS FURTHER STIPULATED, that a copy  
15 of this examination shall be furnished to the attorney  
for the witness being examined without charge.  
16  
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1 DARREN AYOTTE, after first having been duly sworn, was  
2 examined and testified as follows:

3 EXAMINATION

4 BY MR. KEACH:

5 Q. Mr. Ayotte, as you know, my name is Bob Keach.  
6 We apparently came across each other last week at a  
7 restaurant over in East Greenbush. I'm a civil rights  
8 lawyer. You're being deposed in my office here in  
9 Albany.

10 I'm going to go a little quicker with your  
11 examination. We've had a long day. And I also think  
12 that you have some tangential role in this. So, your  
13 examination won't be as thorough. I can assure you you  
14 will be out of here at five o'clock sharp, to the extent  
15 that you have childcare issues and the like to deal  
16 with.

17 You understand that I'm not -- that Ms. Trostle  
18 is not suing you, correct?

19 A. I do.

20 Q. You're here as a third party to provide  
21 information that may be relevant to her claims against  
22 others employed by your agency, correct?

23 A. I do.

1       Q. I'm going to ask you a series of spoken  
2 questions. You need to provide me with a spoken  
3 response. Our court reporter cannot take down a shake  
4 or nod of the head.

5       A. Okay.

6       Q. You also have to wait until I finish my question,  
7 and I will try to show you the same courtesy in return;  
8 although, I didn't do such a hot job of that with the  
9 last witness we had. But we don't want to talk over  
10 each other. That's bad in depositions.

11           If you need a break for any reason, you simply  
12 need to ask me, and I will accommodate your request for  
13 a break. I just ask you not ask me for a break when  
14 there's a question pending, meaning a posed question to  
15 you and you haven't responded, or when I'm questioning  
16 you about a document.

17           Is there anything going on today of an emergent  
18 nature that you think would distract you from these  
19 proceedings?

20       A. No.

21       Q. And finally, I'm not a perfect examiner. If I  
22 ask you a question and you don't understand it, let me  
23 know, and I'll take the steps necessary to make sure you

1 understand them. On the flip side, if you answer my  
2 questions, I'm going to assume you understood them.

3                  Does that sound fair?

4                  A. Yes.

5                  Q. How long have you been working for the Department  
6 of Correctional Services for?

7                  A. I've been with the department od correctional  
8 services for 17 and a half years.

9                  Q. And we established sharing stories amongst  
10 ourselves here at the table that you initially worked as  
11 a corrections officer in the Department of Correctional  
12 Services.

13                A. Yes.

14                Q. How long did you work as a CO for?

15                A. I was a CO for about six years, just over six  
16 years.

17                Q. And where did you work at?

18                A. I started out of the corrections academy as a  
19 correctional officer trainee at Coxsackie Correctional  
20 Facility. I then worked at Sing Sing, Bedford Hills,  
21 and then Greenhaven Correctional Facility.

22                Q. And then, once you left Greenhaven and come to  
23 central office, have you stayed at central office since?

1 A. Yes.

2 Q. What job titles have you held in central office?

3 A. I was a senior administrative assistant. I was  
4 an associate personnel administrator. I have been an  
5 assistant director of personnel. And I am now the  
6 director of personnel.

7 Q. Well, director of personnel is different than  
8 being the director of human resources, right?

9 A. Yes, it is.

10 Q. You're subordinate to the director of human  
11 resources.

12 A. No. There currently is no director of human  
13 resources. I am serving in that capacity as the  
14 director of personnel.

15 Q. And your predecessor in that would have been  
16 Mr. Martuscello.

17 A. Yes.

18 Q. In June of 2011 what was your title?

19 A. Assistant director of personnel.

20 Q. And what does the assistant director of personnel  
21 do?

22 A. Well, there's several of us. My position was, I  
23 was assistant director of personnel over our local

1 operations unit, which was tasked with being a liaison  
2 advisor to our correctional facilities, our personnel  
3 officers in the correctional facilities.

4 Q. So, you're the liaison for the correctional  
5 facilities.

6 A. That is correct.

7 Q. And so, if they had personnel questions, they  
8 would call you.

9 A. My staff that I supervised and me, as well. Yes.

10 Q. And did you get involved in decisions about  
11 whether or not to entertain notices of discipline  
12 against subordinate employees of the Department of  
13 Corrections?

14 A. No. Personnel is not charged with discipline of  
15 employees. That's charged to the office of labor  
16 relations.

17 Q. Well, so what role would you play in demoting  
18 provisional employees, if any?

19 A. Provisional employees have no I believe it's  
20 Article 75 rights. So we would be responsible for  
21 pursuing any probationary terminations, provisional  
22 terminations, or temporary terminations of employees  
23 that have those statuses.

1 Q. And did you know Mrs. Trostle prior to your  
2 involvement in the decision to demote her from her  
3 position in the office of classification and movement?

4 A. No. I did not and do not know Mrs. Trostle.

5 Q. So, how did it come to pass that you became  
6 involved in Mrs. Trostle's demotion?

7 A. From what I can ascertain from the documents,  
8 there was a termination log prepared by Jean Daniels,  
9 who is an associate personnel administrator. That  
10 termination log requires review and signature by several  
11 different people. Normally, that wouldn't have fell in  
12 to my area. I'm assuming that either the assistant  
13 director over that area was out that day, and that's why  
14 it came to me.

15 Q. Well, I appreciate you clarifying that for me.

16 Ordinarily, this type of terminating a  
17 provisional employee or demoting them would not have  
18 ended up on your desk.

19 A. It may have if it was a facility employee. This  
20 was a central office employee. In the bureau of  
21 personnel we have the local operations unit, which is  
22 where I worked at the time, and then we have main office  
23 personnel. There's another assistant director over in

1 the office of personnel that that would have normally  
2 gone to if the person was in that day. So it must have  
3 come to me because that person was not in that day. We  
4 cover for each other if someone is not there. Then the  
5 paperwork would come to the next person.

6 Q. I understand. Was Jean Daniels one of your  
7 subordinates?

8 A. She would have been a subordinate in the bureau  
9 of personnel, but she didn't work directly for me. She  
10 worked for the assistant director over main office  
11 personnel.

12 Q. Who was the assistant director over main office  
13 personnel?

14 A. I don't know exactly at that time. It could have  
15 been Carol McCowski, but I don't know if Carol McCowski  
16 retired around that time. And the person there now is  
17 Susan Edwards. So, I'm not exactly sure who was there  
18 at that period of time.

19 Q. What documentation were you provided to support  
20 Mrs. Trostle's demotion back to her hold item besides  
21 the document that's referred to as a termination log or  
22 a termination request?

23 A. I believe there is some supporting documentation

1 from the office of classification and movement.

2 Q. And do you remember what that documentation was?

3 A. Yeah. It was to/from, I believe, from a memo, a  
4 memo, a to/from, a memorandum.

5 Q. I heard that term a little too much.

6 Well, I'm going to show you a document that we  
7 previously marked as Plaintiff's Exhibit 4 and  
8 Plaintiff's Exhibit 1, and I'd -- well, I showed this to  
9 you at the same time I pose a different question.

10 What documentation did you review prior to your  
11 testimony today?

12 A. I reviewed the term log. And now that I'm  
13 looking at this, this was attached to the term log. I  
14 looked at it last week.

15 Q. Did you look at anything else to prepare for your  
16 testimony today?

17 A. No.

18 Q. And when you reviewed that, what role did you  
19 play independently in determining that Ms. Trostle  
20 should be terminated?

21 A. When I reviewed it at the time that I was signing  
22 off on the termination log.

23 Q. Yes.

1       A. I reviewed this -- basically, my responsibility  
2 is to review the term log as prepared by the person  
3 preparing the term log, subordinate, and then I compare  
4 what's written here to what the supporting documentation  
5 is that is supplied by the program area and make sure  
6 that it's written -- it reflects -- the term log  
7 reflects what is provided to us in the supporting  
8 documentation.

9       Q. Who's the person responsible for making the  
10 determination that Mrs. Trostle should be demoted and  
11 sent back to Greene Correctional Facility?

12      A. The ultimate termination.

13      Q. Yes.

14      A. Like someone who terminated her from her  
15 provisional position.

16      Q. Yes.

17      A. That would have been Dan Martuscello, director of  
18 personnel at the time.

19      Q. And do you know what order that was circulated,  
20 meaning that particular document?

21      A. Yeah. They are circulated in the same manner  
22 each and every time. It would go to either the senior  
23 personnel administrator, who would prepare this. It

1 would go to an associate personnel administrator, an  
2 assistant director. And then it would make its way down  
3 to the director of personnel, simultaneously going to  
4 the office of diversity management for signature.

5 Q. Well, here's what I'm trying to figure out: If  
6 you're told by someone that you don't supervise that a  
7 determination has been made to terminate somebody, are  
8 you just -- I don't use this term pejoratively you  
9 understand, but are you pretty much just a rubber stamp  
10 as part of that process, where you have to sign off on  
11 decisions that others have made or do you have  
12 independent input into it?

13 A. Yeah. If I didn't think that the termination log  
14 or if the personnel employee reflected exactly or  
15 reflected in the termination log what was reflected in  
16 the supporting documentation, I would certainly ask the  
17 associate personnel administrator, in this case Jean  
18 Daniels, say, listen, this isn't what this reflects or  
19 this isn't -- it's not -- there's questions. There  
20 might be questions I would have to ask.

21 Q. If it didn't match up.

22 A. Correct.

23 Q. How about beyond that, how about the decision

1 itself, the termination decision, would you have the  
2 ability to overrule that or do you just -- you're just  
3 required to sign these forms?

4 A. Yeah. If I didn't think that there was  
5 justification for a termination, then I wouldn't send  
6 that down to the director. I would then go back to  
7 the -- or direct the employee to go back to the program  
8 area and say, this isn't -- there's not enough here for  
9 termination.

10 Q. Has that ever happened?

11 A. Yeah. Sure. I've asked for different things.

12 Q. And when you say termination, do you mean  
13 termination from provisional position or a demotion and  
14 return to her hold item?

15 A. I've done it in both cases, whether it's a  
16 probationary termination or a provisional termination or  
17 a temporary employee being terminated.

18 Q. Did you have any conversations with Douglas  
19 Botsford at any point in time about Melissa Trostle?

20 A. No, I did not.

21 Q. Did you have any conversations with Theresa  
22 Knapp-David at any point in time about Melissa Trostle?

23 A. No, I did not.

1 Q. Did you have any conversations with any  
2 individuals that are reflected in the signature log on  
3 the termination request about Mrs. Trostle?

4 A. I don't know if I had any conversations at this  
5 time about this stuff here. No. I don't remember.

6 Q. You don't have any recollection.

7 A. I do not.

8 Q. Did you review your e-mails to see whether or not  
9 you had any e-mail about Mrs. Trostle?

10 A. I did not.

11 Q. Now, you believe that the memorandum put forward  
12 by Mr. Botsford is sufficient to justify terminating  
13 someone and returning them to their hold item.

14 A. I do and I did. Yes.

15 Q. And why is that?

16 A. Well, it reflects -- the memo, to me, reflects an  
17 employee who either demonstrated, according to the memo,  
18 that she was excessively using the telephone, that she  
19 had some issues with being tardy to work, and  
20 additionally, the director, director of class and  
21 movement, Douglas Botsford, is saying that her work did  
22 not rise to the level of dedication and professionalism  
23 that he would have expected in the office.

1 Q. And that's because of her tardiness and using the  
2 phone.

3 A. Yeah. I'm sure that's what the memo says.

4 Q. Now, at the time that you reviewed that, do you  
5 know whether or not Mrs. Trostle had been given an  
6 opportunity to pay for her phone calls?

7 A. I do not know that.

8 Q. Do you know how Mrs. Trostle's phone use compares  
9 to other employees in the office of classification and  
10 movement?

11 A. I don't know that, either.

12 Q. Do you know whether or not other individuals in  
13 the office of classification and movement had also  
14 failed to pay for their phone calls?

15 A. I do not know that.

16 Q. Do you know whether or not other individuals in  
17 the office of classification and movement were violating  
18 state policies as it relates to the use of the phones  
19 for personal reasons?

20 A. I do not know that.

21 Q. If I told you that all of the employees in the  
22 office of classification and movement, and not just  
23 Mrs. Trostle, were violating New York State Department

1 of Correctional Services directives about using the  
2 phones for personal reasons, would that change your  
3 opinion about whether or not her termination was  
4 justified?

5 A. No. Probably not.

6 Q. Well, what if only Mrs. Trostle was singled out  
7 and no one was subjected to any sort of penalty for  
8 doing that, would that cause you any concern?

9 A. Yes.

10 Q. And would that cause you to question the  
11 underlying decision to terminate her employment if that  
12 were true?

13 A. Yes.

14 Q. Would it cause you concern if Douglas Botsford  
15 admitted that he routinely used his state-issued  
16 telephone to make personal calls?

17 A. Could you repeat the question, I'm sorry.

18 Q. Would it cause you concern, in reviewing  
19 Mrs. Trostle's use of the phone, that Douglas Botsford,  
20 her own supervisor, admitted that he routinely used his  
21 phone to make personal calls during work hours?

22 A. So would it concern me that Doug --

23 Q. Would it concern you that Mr. Botsford was doing

1 exactly the same thing as Mrs. Trostle?

2 MS. RUBINSTEIN: Objection.

3 THE WITNESS: I guess it would depend  
4 on the amount of calls, the length of the  
5 calls, and whether the calls were being  
6 reimbursed or not. The department does  
7 allow for some personal calls to be made, as  
8 long as the employee reimburse -- pays for  
9 the phone calls.

10 BY MR. KEACH:

11 Q. Well, those calls were only to be made in  
12 emergency situations with the supervisor's approval;  
13 isn't that right?

14 A. I don't know the directive off the top of my  
15 head, what it says, but I know that the department does  
16 allow employees to make calls as long as they pay for  
17 the calls.

18 Q. I'm going to show you Exhibit 13. Ask if you  
19 could take a look at that for me, and tell me if you  
20 recognize it.

21 A. I recognize that it is the Department of  
22 Corrections state-produced telephone equipment and  
23 services.

1       Q. And would you agree with me that that directive  
2 says that individuals should only be using state-issued  
3 telephones to make phone calls if there are emergency  
4 situations?

5       A. Well, it says that, "state-furnished telephone  
6 equipment and services are to be used solely for the  
7 performance of official state business, except in cases  
8 of emergency. At most facilities public telephones have  
9 been installed in or near the state offices for personal  
10 convenience of employees. Employees may use these  
11 telephones to conduct personal business before or after  
12 normal working hours or at authorized meal or rest  
13 periods. For those situations where it may be necessary  
14 to make the occasional call of limited duration, you  
15 must get authorizations from your supervisor."

16           Yeah. It does say that. I think that this  
17 directive is more directed toward facility staff than it  
18 is the staff in central office.

19       Q. To my knowledge, there's no directive to staff in  
20 central office, right?

21       A. That's correct. That I'm aware of.

22       Q. And you would agree with me that directives are  
23 to be followed by people who work for DOCCS, isn't it?

1 A. Yes.

2 Q. And so, have you ever used your state-issued  
3 phone to make personal calls that aren't emergencies?

4 A. Have I?

5 Q. Yes.

6 A. Yes, I have.

7 Q. Well, I want you to assume that everyone in the  
8 office of classification and movement was making  
9 personal phone calls of -- on state-issued phones, and  
10 some were doing it more than Mrs. Trostle.

11 Would it cause you concern that those individuals  
12 were not subjected to any sort of penalty for engaging  
13 in the same conduct that Mrs. Trostle was demoted for?

14 A. I would expect that the same rules be applied to  
15 everybody in a particular office.

16 Q. And if the same rules are not applied, that would  
17 cause you concern as someone who's involved in personnel  
18 for the Department of Corrections, wouldn't it?

19 A. Yes, it would.

20 Q. And if people weren't being subjected to the same  
21 rules, would that cause you to question why one  
22 individual in a group of people was singled out?

23 A. If someone was singled out, that would cause me

1 concern. Yes, it would.

2 Q. And it would also cause concern that that person  
3 may have been singled out for an impermissible reason  
4 under the law, wouldn't it?

5 MS. RUBINSTEIN: Objection.

6 THE WITNESS: I guess I don't  
7 understand the question.

8 BY MR. KEACH:

9 Q. If someone was singled out for conduct that was  
10 the same as everyone else, wouldn't it cause you concern  
11 that that person being singled out may be a pretext for  
12 some impermissible reason to affect that person's  
13 employment?

14 MS. RUBINSTEIN: Objection.

15 THE WITNESS: It would cause me concern  
16 if anybody is singled out for any reason.

17 It would cause me concern.

18 BY MR. KEACH:

19 Q. If someone was singled out because they made a  
20 complaint about racial discrimination in the workplace,  
21 that would cause you concern, wouldn't it?

22 A. Absolutely it would cause me concern.

23 Q. Were you aware at the time that Mrs. Trostle was

1 subject for termination that she had already started the  
2 process of complaining about racial discrimination in  
3 the workplace by talking to her supervisor?

4 A. No, I was not aware of that.

5 Q. And would you agree with me that the first  
6 step -- one of the options that you had as an employee  
7 of the Department of Correctional Services, if you're  
8 facing racial discrimination in the workplace, is to  
9 complain to the supervisor before taking additional  
10 action?

11 A. That's one step. You can also file a complaint  
12 directly with the office of diversity management. You  
13 could seek out any manager or supervisor and make a  
14 complaint, if you didn't feel comfortable going to your  
15 supervisor.

16 Q. My understanding is, you could have gone -- you  
17 had one of three options to start the process. The  
18 first option is complain to your supervisor, the second  
19 option is -- or any supervisor, the second option is  
20 complain to diversity management, and the third option  
21 is to just go right to EOC, right?

22 A. I don't know how people go -- I don't know if  
23 they exhaust -- whether or not they have to go to ODM

1 first, diversity management first, before they go to  
2 EOC. I'm not really sure about that. But, yeah, I  
3 imagine that that was an option they could exercise.

4 Q. But one of the options is go to a supervisor and  
5 complain to start the process.

6 A. That could be an option. Yes.

7 Q. And would it also cause you concern if someone --  
8 if the process to terminate someone from employment with  
9 the Department of Corrections started immediately upon  
10 their having to go out on emergency medical leave, which  
11 would be covered by the Family Medical Leave Act?

12 A. Would it cause me concern if the process to  
13 terminate somebody started when somebody was exercising  
14 the right to go out on family medical leave?

15 Q. Yes.

16 A. Yeah. It would probably cause me concern. I  
17 would probably want to ask additional questions about  
18 that.

19 Q. And the information you were given by  
20 Mr. Botsford didn't mention that he began his  
21 investigation into Mrs. Trostle's conduct the day that  
22 she had to go out for emergency surgery for her kidneys.

23 A. I was not aware that she was out of work for

1       emergency surgery, nor did I have any conversation with  
2       Douglas Botsford other than the memo here.

3           Q.   Do you agree with me that that's something that  
4       should have been presented to you as part of your review  
5       of Mrs. Trostle's demotion?

6           MS. RUBINSTEIN:   Objection.

7           THE WITNESS:   If that is, in fact,  
8       true, then, yeah, it's something that  
9       probably should have been brought to  
10      people's attention.

11     BY MR. KEACH:

12     Q.   As well as a complaint about racial  
13   discrimination in the workplace; fair to say?

14     A.   Yes.

15     Q.   Again, I think you've already answered this, but  
16   I just want to be thorough.

17           If you had known either of those things, that  
18   would have caused you as a supervisor to take a second  
19   look at this to make sure that what was happening was  
20   appropriate; fair to say?

21           MS. RUBINSTEIN:   Objection.

22           THE WITNESS:   Absolutely.   Yes.

23     BY MR. KEACH:

1       Q. And do you know whether or not Mrs. Trostle was  
2 ever provided with an opportunity to reimburse the state  
3 for the \$7 of phone calls that's in Mr. Botsford's memo?

4       A. I don't know that. I know the employees get a  
5 monthly phone bill, and at that point they have an  
6 opportunity to pay for whatever calls they might have  
7 made during that period.

8       Q. And if Mrs. Trostle wouldn't have been given a  
9 copy of that phone bill and given an opportunity to pay  
10 for the calls, that would have caused some concern,  
11 wouldn't it?

12      A. If she wasn't -- I'm sorry.

13      Q. If she never was given her phone bills by her  
14 superiors, that they weren't given to her, wouldn't that  
15 cause some concern?

16      A. Yes. If she did not receive her phone calls, how  
17 would she know what calls...

18      Q. To pay for.

19      A. Correct.

20      Q. Was there any sort of conference with yourself  
21 and the other people involved in making this decision  
22 about what to do with Mrs. Trostle?

23      A. No. There was no conference.

1       Q. And what was the length of your consideration of  
2 this entire situation?

3           I mean, I just want to step back. My  
4 understanding was that somehow this memo would come to  
5 you with the memorandum attached to it, right?

6       A. Yes. This would come to me with the supporting  
7 documentation. I would take a review of it.

8       Q. How did you get it? Did it come as a physical  
9 paper file or did you get it e-mailed to you?

10      A. No. I'm sure it came as a paper file like most  
11 of them do. Probably Jean Daniels walked it over to me  
12 after she prepared it for my review and signature.

13      Q. And so, do you remember Jean handing it to you,  
14 or do you have any independent recollection of your  
15 review of these documents?

16      A. No, I do not.

17      Q. I mean, we can confirm that's your signature,  
18 though.

19      A. Yes. That is absolutely my signature.

20      Q. Let's assume you pick this thing up. How much  
21 consideration would you have given it before you signed  
22 your name?

23           How long would you have looked at this for --

1 A. Well, I would look --

2 Q. -- five minutes, ten minutes?

3 MS. RUBINSTEIN: Objection.

4 THE WITNESS: I would look at it as  
5 long as it took for me to make an educated  
6 decision and put my signature on there. My  
7 signature is on there. So, I would make  
8 sure that it was -- in my opinion, that the  
9 provisional termination was justified and  
10 supported by the supporting documentation.

11 BY MR. KEACH:

12 Q. I understand you don't have any specific memory,  
13 but you have the two documents in front of you now.

14 How long do you think it would have taken you --  
15 and we'll let the record reflect that you're giving me  
16 an approximation.

17 How long do you think it would have taken you to  
18 look at Exhibit 4, look at the attachment, Exhibit 1,  
19 reach your conclusion, and sign your name?

20 MS. RUBINSTEIN: Objection.

21 THE WITNESS: I don't know. 15, 20  
22 minutes.

23 BY MR. KEACH:

1       Q. And just so we're clear, you have no recollection  
2 of seeing any other supporting documentation for that  
3 memo besides Douglas Botsford's memorandum and the  
4 termination request that you have.

5       A. That is correct.

6       Q. And you had no conversations with anybody about  
7 the situation before signing your name, based on  
8 Mr. Botsford's recommendation.

9       A. No. Not that I remember. No.

10      Q. And I may have already asked you this. I just  
11 want to be clear.

12            You had no interaction or knowledge of  
13 Mrs. Trostle before you received this memorandum; fair  
14 to say?

15      A. Fair to say. Yes.

16      Q. And you had no opportunity to observe anything  
17 that was going on in the office of classification and  
18 movement because that's not where your office is; fair  
19 to say?

20      A. Yes. That's fair to say.

21      Q. Do you work at the central campus here, the  
22 Harriman campus?

23      A. I do. My office is in building number two.

1 Q. And was it in building two in May and June of  
2 2011?

3 A. Yes.

4 Q. And what floor is classification and movement on?

5 A. They are on the third floor.

6 Q. And what floor are you on?

7 A. I am on the first floor and was then, as well.

8 Q. Have you told me everything that you can recall  
9 about your review of Mrs. Trostle's termination?

10 A. Yes, I have.

11 Q. Did you talk with anyone about Mrs. Trostle's  
12 termination after she left central office and went to  
13 Greene?

14 A. No.

15 Q. Were you ever contacted by Herman Reinhold about  
16 her?

17 A. I don't remember. I don't remember. I don't  
18 believe so, though.

19 Q. When did you first learn that Mrs. Trostle had  
20 sued the state?

21 A. I had -- now, as the assistant director, I  
22 believe that was Brian Rider or...

23 Q. Let me cut you off. I don't want you to tell me

1 the substance of any conversations you had with any  
2 lawyers that work for the state government, either in  
3 the attorney general's office or in the Department of  
4 Correctional Services, okay? Because you have a  
5 privilege with those individuals that I don't want to  
6 implicate by my question.

7 So, if your answer would be, I learned about this  
8 from counsel, that should be the end of the answer, not  
9 to tell me about the conversation.

10 A. Yes. I learned about this from counsel.

11 Q. Did you review a copy of the complaint?

12 A. No, I have not.

13 Q. Have you ever provided any statements about this  
14 to anybody?

15 A. No.

16 Q. Now, if someone is occasionally late to work, do  
17 you feel that would justify their termination if they're  
18 in a management position?

19 A. Define occasionally, because it could make a  
20 difference.

21 Q. We'll define it from this. The comment here is  
22 that Mrs. Trostle was late over the course of, say,  
23 seven months on -- looks like she was late to work

1 coming in ten times and was late returning from lunch  
2 two times.

3 Well, let me step back. You don't know whether  
4 there's any documentation about Mrs. Trostle being late  
5 to work, do you?

6 A. I don't off the top of my head. No.

7 Q. And you would agree with me that if a supervisor  
8 has a concern about a subordinate being late for work,  
9 that there's a policy in place that would allow for  
10 additional monitoring of that person to ensure that  
11 they're in compliance with the hours of work, correct?

12 A. Yes.

13 Q. And do you know whether or not Ms. Trostle was  
14 ever given the opportunity to participate in such a  
15 monitoring program?

16 A. I don't. But I think the memo says something  
17 about her being counselled on occasions.

18 Q. But informal counseling means, hey, I told you  
19 not to be late, right?

20 A. It's an informal conversation between the  
21 supervisor and the employee. Yes.

22 Q. Let's assume that someone is late once a week by  
23 two or three minutes, would you agree that that is a

1 situation where someone deserves to be terminated from  
2 their employment?

3 MS. RUBINSTEIN: Objection.

4 THE WITNESS: I believe that if  
5 somebody is late once a week for two to  
6 three minutes, then there's an issue with  
7 that employee, and I think that that issue  
8 should be addressed.

9 BY MR. KEACH:

10 Q. Do you think that someone should be fired for  
11 that, in the absence of an effort to ensure compliance?

12 MS. RUBINSTEIN: Objection.

13 THE WITNESS: I believe that, depending  
14 on how long it's going on for, yes, I do  
15 believe that the employee could be  
16 terminated for something like that.

17 BY MR. KEACH:

18 Q. But wouldn't it be fair to say that that employee  
19 would be terminated for tardiness issues after being  
20 given a number of different opportunities to comply?

21 A. It depends on the status of the employee. I  
22 mean, provisional employees really have no right to  
23 their job, and especially managers and assistant

1 director position. I think that would hold -- as a  
2 department, as an agency, we hold those people to a  
3 higher standard. I think that they should be at work,  
4 they should be at work on time, and they should only be  
5 off when they're scheduled to be off from work.

6 Q. Well, I can appreciate that. I guess what I'm  
7 trying to determine, however, is: You supervise people,  
8 don't you?

9 A. Yes, I do.

10 Q. Have you had to terminate provisional employees  
11 that you supervise?

12 A. No, I have not.

13 Q. Have you had to terminate anybody that you  
14 supervised?

15 A. Ever.

16 Q. Yeah.

17 A. Just let me think. I don't think that I've had  
18 to terminate anybody that I directly supervised. No.

19 Q. Now, did you have to go to any schools to learn  
20 how to be a good supervisor when you started working at  
21 DOCCS?

22 After you left Greenhaven and came to central  
23 office, did you have to go to school to learn how to be

1 a good supervisor?

2 A. No. I wasn't a supervisor right away when I left  
3 Greenhaven and came to central office. But they do --  
4 the department does offer supervisory training,  
5 team-building training, things like that.

6 Q. And you've been to it.

7 A. I have been to different ones. Yes.

8 Q. And did you learn in that training about how to  
9 be a supervisor about the need to keep appropriate  
10 records if you have concerns about what your employees  
11 are doing so that down the road, if you have to take  
12 adverse action against them, you've got the record  
13 there?

14 MS. RUBINSTEIN: Objection.

15 THE WITNESS: I'm a believer in  
16 documentation. So I think that, speaking  
17 for myself as a supervisor, if I was having  
18 an issue with an employee, I would be  
19 documenting the issues.

20 BY MR. KEACH:

21 Q. And that documentation, that is something that  
22 goes throughout the Department of Correctional Services  
23 in terms of keeping appropriate documentation, doesn't

1 it?

2 A. Yeah. We are a documentation-driven agency.

3 Q. Yeah. Absolutely. I've seen -- I've done  
4 other -- I told you I've done other cases. And I've  
5 seen -- in inmate cases, I mean, there's a lot of  
6 documentation that corrections officers generate when  
7 inmates act up so that you have a record and you can --  
8 if you have to press charges, you've got all your memos  
9 and stuff, right?

10 A. Yes.

11 Q. And so, if there was no documentation about  
12 Mrs. Trostle being late that was compiled by her  
13 supervisors and Mrs. Trostle denied being late, that  
14 would be a cause for some concern, wouldn't it?

15 MS. RUBINSTEIN: Objection.

16 THE WITNESS: I mean. That would  
17 cause -- there obviously would be a dispute  
18 as to whether she was or she wasn't with her  
19 supervisor.

20 BY MR. KEACH:

21 Q. Right. Well, in this instance, how would that  
22 dispute get worked out?

23 Because Ms. Trostle denies that she was late all

1 the time, and there were no contemporaneous records  
2 taken by the supervisors to document that before they  
3 made the decision, so, how would that issue get worked  
4 out, or is the supervisor believed and the employee not  
5 believed?

6 MS. RUBINSTEIN: Objection.

7 THE WITNESS: In this matter right  
8 here.

9 MR. KEACH: Yeah.

10 THE WITNESS: Yeah. I mean, i would  
11 take the supervisor's word. The supervisor  
12 is the manager of the unit and he's  
13 reporting to me that one of his employees is  
14 late. I don't know what other documentation  
15 the supervisor has or not in his possession.

16 BY MR. KEACH:

17 Q. Can you explain to me why Mrs. Trostle was never  
18 given an opportunity to respond to the allegations in  
19 this memo.

20 A. I can't give you an explanation as to that. I  
21 don't know. She's a provisional employee. There's not  
22 a lot of rights that provisional employees have with  
23 regard to holding the position, not the same rights that

1       a permanent employee would have. So, I can't answer why  
2       she wasn't given an opportunity to respond to the  
3       allegations.

4       Q. Taking aside the provisional versus permanent  
5       employee, wouldn't you think it would be good employment  
6       practice, if you're going to make allegations against  
7       someone, that you at least give them an opportunity to  
8       explain themselves?

9                   MS. RUBINSTEIN: Objection.

10                  THE WITNESS: I think, in my current  
11                  capacity, if I had an employee in the same  
12                  situation and they approached me about it, I  
13                  would be willing to listen to them.

14       BY MR. KEACH:

15       Q. And do you think that that employee should have  
16       been given an opportunity to see this memo and comment  
17       about it before a decision was made to terminate her  
18       employment?

19                   MS. RUBINSTEIN: Objection.

20                  THE WITNESS: No. Not necessarily.

21       BY MR. KEACH:

22       Q. Well, are you aware that this memo was prepared  
23       when Mrs. Trostle was on family medical leave?

1 A. I do not. I am not aware of that.

2 Q. And are you aware that the day of her termination  
3 was the very day that she returned from family medical  
4 leave?

5 A. I am not aware of that.

6 Q. And would you agree with me that, if Mrs. Trostle  
7 had -- there's a comment here in Exhibit 1 about her  
8 being on the phone one day for 80 minutes.

9 Do you see that?

10 A. Yeah. There were over 80 minutes on one day,  
11 okay.

12 Q. And wouldn't you agree before terminating  
13 Mrs. Trostle, in part because of her making 80 minutes  
14 of long distance calls in one day, that it would have  
15 been appropriate to at least ask her what those calls  
16 were about?

17 MS. RUBINSTEIN: Objection.

18 THE WITNESS: I believe that 80  
19 minutes -- that one 80-minute phone call --  
20 or there were over 80 minutes -- so, I'm not  
21 saying there was one call. It says that  
22 there was one day that there was over 80  
23 minutes of calls. I believe that that is

1           excessive. And I don't know that I would  
2           ask her what those phone calls were about.

3 BY MR. KEACH:

4       Q. What if your mother was in the hospital in Puerto  
5 Rico and was unconscious and you were talking to your  
6 family members about what to do with your mother and her  
7 medical condition, and you had to spend that long on the  
8 phone trying to figure it out, would you deem that to be  
9 excessive?

10           MS. RUBINSTEIN: Objection.

11           THE WITNESS: I would excuse myself  
12 from work, ask a supervisor for some time  
13 off so I could handle those personal  
14 matters.

15 BY MR. KEACH:

16       Q. But let's assume that wasn't an option. If you  
17 had -- your parent was in the hospital and you had to  
18 address their medical care when they're in Puerto Rico  
19 and you had to spend 80 minutes on the phone doing that,  
20 would you feel that's inappropriate in your own position  
21 if you had to do that?

22           MS. RUBINSTEIN: Objection.

23           THE WITNESS: Yes, I do. I do. I

1           think that you would have to excuse yourself  
2           from work and take care of it. If it  
3           requires you to be on the phone for that  
4           long during your workday, I would say that  
5           you should be excusing yourself from work to  
6           take care of that business.

7 BY MR. KEACH:

8       Q. I'm asking you to assume that that wasn't an  
9       option that particular day because it was really busy,  
10      you had a lot to do, you had a lot of things going on,  
11      and you couldn't leave the office for an extended period  
12      of time. So, under that hypothetical, you couldn't  
13      leave. You knew that day that the governor was coming  
14      to visit the department of personnel in an hour and a  
15      half, and you had to be there. That wouldn't change  
16      your opinion.

17      A. Would it change my opinion about being on the  
18      phone? I still -- I have to say that I think 80 minutes  
19      of long distance phone calls in one day is excessive. I  
20      don't know. I can't answer the question. I don't know  
21      how I would handle that.

22      Q. Yeah. You don't know how you would handle it  
23      until you're in that situation, right?

1 A. That is correct.

2 Q. And so, if Mrs. Trostle's 80 minutes of phone  
3 calls on that particular day were related to her mother  
4 in the hospital, that may cause you to take a different  
5 view of the situation.

6 Even if you felt it was excessive, even if you  
7 felt she should have excused herself, that would have  
8 caused you to look at this differently, wouldn't it?

9 MS. RUBINSTEIN: Objection.

10 THE WITNESS: I don't know. I mean, if  
11 we're talking about everything, probably  
12 not.

13 BY MR. KEACH:

14 Q. Well, what do you mean by everything?

15 A. Well, if we're talking about 31 long distance  
16 personal calls totaling over 230 minutes, notwithstanding,  
17 however -- whatever time period we're talking about, and  
18 then 80 minutes on a particular day.

19 Q. Time frame is 14 months.

20 A. Okay.

21 Q. So I did this the last time. I'm not going to do  
22 it to you because we all want to get out of here today.  
23 But we added up the time she spent calling 800 numbers

1 with the time that she spent on the calls, and we  
2 figured out that it added to 2.92 minutes per day on  
3 average that Mrs. Trostle spent on the phone attending  
4 to personal matters.

5 Now, you said you used your phone to attend to  
6 personal matters, right?

7 A. I have. Yes.

8 Q. Do you have school-age children?

9 A. I do.

10 Q. Did you ever have to deal with calls from your  
11 kids' school?

12 A. I have not, fortunately enough.

13 Q. Well, did you ever have to call and deal with  
14 childcare issues after work and stuff like that with  
15 your wife?

16 A. I don't know that I have.

17 Q. If you averaged out your time, do you spend three  
18 hours a day making personal phone calls off your  
19 state-issued phone?

20 A. No, I do not.

21 Q. Can you see how some people with young children  
22 may have to do that?

23 A. Three hours a day.

1 Q. No, no, no. I didn't mean three hours a day. I  
2 mean three minutes a day. Let me go back. You caught  
3 me there. I appreciate you clarifying that for me.

4 Do you spend three minutes a day making personal  
5 phone calls off your state-issued phone?

6 A. No, I do not.

7 Q. Can you see how someone else may have to spend  
8 three minutes a day making personal phone calls off  
9 their state-issued phone if they have young kids?

10 MS. RUBINSTEIN: Objection.

11 THE WITNESS: Not being in that  
12 situation, I guess I can't answer the  
13 question. Because I have different luxuries  
14 than some people.

15 BY MR. KEACH:

16 Q. But if you learn that one of your subordinates  
17 who had young kids and was the primary caregiver for her  
18 kids averaged three minutes a day making personal phone  
19 calls on the state system, would that cause you any  
20 great concern?

21 A. Well, if we're talking about average or we're  
22 talking about a compilation of one day. I mean, it  
23 would cause me concern if there was a half a day where

1       they were on the phone or three days that they spent  
2       half a day on the phone making telephone calls as  
3       opposed to the two minutes a day spanning 14 months.  
4       So, yeah, I mean, we're looking at different things  
5       there, in my opinion.

6           Q. I remember in the last examination I actually  
7       gave the state the benefit of the doubt and stated it  
8       was 12 months, not 14. So there would actually be three  
9       minutes a day -- using those numbers would be three  
10      minutes a day for 12 months, 50 weeks work in a year,  
11      and then a seven-and-a-half-hour workday.

12           So, but the three minutes a day workday on the  
13      phone doing personal matters, that would not cause you  
14      any great concern, would it?

15           MS. RUBINSTEIN: Objection.

16           THE WITNESS: It would depend on if it  
17      was interfering with other work that was  
18      being done, because you got to look at the  
19      totality of it. As a manager, that's what I  
20      would do.

21      BY MR. KEACH:

22           Q. But there's no indication in the memo from  
23      Mr. Botsford that the average three minutes of phone

1 calls a day was interfering with other work that  
2 Mrs. Trostle had to do, is there?

3 A. Let me just look at it again. Well, it talks  
4 about that he considers her use of the phone to such an  
5 extent for personal reasons inappropriate. As manager,  
6 Ms. Trostle cannot function effectively or present a  
7 positive example to her subordinates by consuming over  
8 700 minutes of personal calls and not reimbursing the  
9 state for the phone charges. So, there is some  
10 reference to that it may have been having an impact on  
11 the operation.

12 Q. Well, I'm just trying to figure out -- and maybe  
13 you can explain it to me -- how does someone being on  
14 the phone for an average of three minutes a day  
15 interfere with their ability to be a manager?

16 I don't understand that.

17 MS. RUBINSTEIN: Objection.

18 MR. KEACH: I'll be honest with you. I  
19 mean, I can't figure out how someone making  
20 three minutes of personal phone calls a day  
21 would interfere with anything, let alone  
22 their ability to be a manager.

23 MS. RUBINSTEIN: Objection.

1                   THE WITNESS: You're talking about an  
2 average, right? So, if we're talking about  
3 a half a day's worth of phone calls or 80  
4 minutes of phone calls in a day, that could  
5 have an impact. But if you spread it out  
6 over the 12 months that you described, I  
7 guess it doesn't look like it could have an  
8 impact. But if you're talking about 80  
9 minutes in one day, that could have an  
10 impact on the operation.

11 BY MR. KEACH:

12 Q. But actually, sir, if we took that 80 minutes out  
13 of there, there'd be actually a lot less, wouldn't it,  
14 in terms of her making personal phone calls during the  
15 day?

16                  Because we got 700 minutes. We take out 10  
17 percent. So, now we're probably down to about two and a  
18 half minutes a day.

19                  I'm just trying to figure it out. I understand  
20 you got this memo. You reviewed it. You saw the  
21 supervisor recommended her termination. You took a  
22 quick look at the memo and said, yeah, the way this was  
23 written up this justifies what Mr. Botsford recommended.

1           We can agree that that's the process, right?

2           MS. RUBINSTEIN: Objection.

3           THE WITNESS: Yes.

4 BY MR. KEACH:

5       Q. And the reason I'm getting into these issues is  
6 that I'm sure you can understand from Mrs. Trostle's  
7 perspective there was certainly more to the story, and  
8 that she believes that this is all just trumped up to  
9 get rid of her versus being legitimate.

10     Again, I'm just asking you, from the perspective  
11 of someone that supervises these things, if you were not  
12 looking at Mrs. Trostle, if we're looking at someone  
13 else, if someone comes to you says, this employee was on  
14 the phone for three minutes a day and I want them  
15 terminated, you wouldn't agree that that's appropriate,  
16 would you?

17     MS. RUBINSTEIN: Objection.

18     THE WITNESS: Again, I'd have to see  
19 what they -- I'd have to ask them how it's  
20 impacting the operation. I'd have to ask if  
21 it's interfering with other duties, what's  
22 it preventing them from doing.

23 BY MR. KEACH:

1       Q. Under DOCCS policy, shouldn't that person be  
2 given an opportunity to pay for those phone calls in  
3 lieu of being terminated?

4                     MS. RUBINSTEIN: Objection.

5                     THE WITNESS: Every employee has an  
6                             opportunity to reimburse for their personal  
7                             phone calls on a monthly basis.

8 BY MR. KEACH:

9        Q. Let's assume that someone didn't pay for their  
10      phone calls and it comes to the attention of the  
11      department -- of their supervisor, okay? Now, I forget  
12      what the math is and I'm not going to burden you with it  
13      now, but I seem to remember that there's a \$7 phone bill  
14      added up to roughly about three cents a day in personal  
15      calls being made, I think was about the math. It's  
16      probably a little less.

17                  So, let's assume someone is making three cents a  
18      day in personal phone calls. Actually, it'd be less  
19      than three cents a day. I think it was less than a cent  
20      a day when I worked it out the last time, because we're  
21      only talking about 280 minutes over the course of a  
22      year.

23                  So, if someone made less than a cent a day in

1 personal phone calls on the state and didn't reimburse  
2 the state for their 50 cents a month phone bill, do you  
3 think that's appropriate to terminate them from their  
4 employment, or wouldn't you just want them to pay their  
5 bill and do a better job going forward?

6 MS. RUBINSTEIN: Objection.

7 THE WITNESS: Again, I think you have  
8 to look at the totality of the situation.

9 BY MR. KEACH:

10 Q. Well, I'm only asking you about that particular  
11 issue. If one of your subordinates, you learned, made  
12 50 cents a month of personal phone calls on state  
13 equipment and just because they didn't feel like it,  
14 they didn't want to review records, they just threw them  
15 in the garbage, didn't look at it because they were busy  
16 doing other things or just lazy or whatever, and so you  
17 learned 14 months later that that person didn't pay 50  
18 cents a month for their personal calls and nothing else,  
19 what would you do?

20 A. I would probably have a conversation with the  
21 person working for me about it and explain to them that  
22 they're responsible for paying for the phone calls.

23 Q. And you'd say, you owe seven bucks, you're going

1 to pay the state back for the phone calls right now,  
2 accurate?

3 MS. RUBINSTEIN: Objection.

4 BY MR. KEACH:

5 Q. You make them pay for the calls.

6 A. I would point out to them they owe the state  
7 money for the phone calls.

8 Q. And you would expect them to pay for it.

9 A. I would expect them. I expect them to pay for it  
10 on a monthly basis.

11 Q. And then you would also expect them going forward  
12 to appropriately review their records and make sure they  
13 pay for the calls.

14 A. Yes. If I talked to them about the situation, I  
15 would expect them to remedy the situation.

16 Q. And you're not aware of there being any effort to  
17 talk with Mrs. Trostle about her 50 cents a month phone  
18 bill before this incident, correct?

19 A. Other than anything in the memo, I'm not aware of  
20 any other conversation had about it.

21 Q. And would you agree with me, sir, in the absence  
22 of other factors, that someone should be given an  
23 opportunity to pay for those calls before they lose

1       their job, get demoted, and have a \$20,000 a year pay  
2       deduction?

3                   MS. RUBINSTEIN: Objection.

4                   THE WITNESS: Again, you'd have to take  
5       the totality of the situation into account.

6       BY MR. KEACH:

7       Q. I understand. I'm just talking about that issue.

8       A. Serving in this capacity, former capacity, and  
9       serving in my capacity now, I don't take any of these  
10      terminations lightly. I think that they all deserve  
11      consideration, and everybody deserves to have things  
12      looked at objectively before a decision is made.

13      Q. I appreciate that. So you would agree with me  
14      that you would expect Mr. Botsford and Ms. Knapp-David  
15      to also look at things objectively before making  
16      decisions that are conveyed to you, correct?

17      A. I would expect any manager or supervisor working  
18      for the Department of Correctional Services to make  
19      a well-thought-out and educated decision before a  
20      decision was made.

21      Q. And if I could convince you -- and I'm not  
22      suggesting I've done that in this deposition. But if I  
23      could convince you that Ms. Trostle was treated

1 differently than others that were employed in her agency  
2 and that led to her termination, that would cause you  
3 concern, wouldn't it?

4 MS. RUBINSTEIN: Objection.

5 THE WITNESS: Again, like I said  
6 earlier, it would cause me concern if  
7 anybody was being treated differently than  
8 the rest of the people in a particular  
9 office.

10 BY MR. KEACH:

11 Q. You would agree with me that you relied on what  
12 Mr. Botsford said when you made your decision to sign  
13 that paper to terminate Mrs. Trostle's employment,  
14 right?

15 MS. RUBINSTEIN: Objection.

16 THE WITNESS: I relied on the  
17 determination that was provided to me in  
18 support of the termination log that was  
19 prepared by Jean Daniels. Yes.

20 BY MR. KEACH:

21 Q. And if you learned that Mr. Botsford, in fact,  
22 made false statements in his memorandum in support of  
23 Ms. Trostle's termination, that would cause you concern

1 as someone who signed off on her being terminated from  
2 her provisional position, wouldn't it?

3 MS. RUBINSTEIN: Objection.

4 THE WITNESS: Yes, it would.

5 BY MR. KEACH:

6 Q. I probably already asked this. I want to be  
7 thorough and wrap things up.

8 You never talked to Theresa Knapp-David about  
9 Mrs. Trostle ever, correct?

10 A. No. I don't remember having any conversation  
11 with anybody about Mrs. Trostle ever.

12 Q. And that's the same for Mr. Botsford.

13 A. Yes. That is correct.

14 MR. KEACH: I'm going to take a little  
15 break here and collect my thoughts.

16 Give me a moment.

17 (Recess taken.)

18 BY MR. KEACH:

19 Q. There was an investigation into what happened  
20 with Ms. Trostle's demotion by diversity management  
21 after Mrs. Trostle filed a formal written complaint with  
22 diversity management upon her return from medical leave.

23 Do you know anything about that investigation?

1 A. I do not.

2 Q. There was some comment made by a woman with the  
3 last name of Brooks that people had reviewed her  
4 determination and made edits to it. And some of those  
5 edits had concerns about the fact that Mrs. Trostle was  
6 not allowed to pay for her phone calls and the like.

7 Do you know anything about that?

8 A. I do not.

9 Q. Did you have any role at the time of reviewing  
10 determinations made by the office of diversity  
11 management?

12 A. No.

13 Q. Do you have that role now?

14 A. I do not.

15 Q. Well, who would review determinations made by the  
16 office of diversity management?

17 A. Determinations as a result of an investigation?

18 Q. Yeah.

19 A. The office of diversity management would. They  
20 would be conducting investigation. There's a director.  
21 And then we also -- now we have a deputy commissioner  
22 over there. But I don't know how exactly how that would  
23 play out.

1       Q. So, you would never get involved in that, is what  
2 you're telling me.

3       A. Not unless I was questioned as part of the  
4 investigation. I'm not charged with conducting the  
5 investigation or questioning witnesses or anything like  
6 that.

7       Q. Were you questioned as part of the investigation?

8       A. No.

9       Q. What role does your office play now in addressing  
10 complaints made by employees of the Department of  
11 Correctional Services to the EOC or Division of Human  
12 Rights?

13      A. My office doesn't play any role with that. If  
14 someone came to me with a complaint, I would forward  
15 that complaint to the office of diversity management.

16      Q. That's where all that stuff is handed over,  
17 diversity management, correct?

18      A. Yes.

19      Q. And that's outside your purview of supervision  
20 even as the director of personnel.

21      A. That is correct.

22      Q. So, decisions made about complaints to diversity  
23 management, those would be made by diversity management.

1 And then if there was some discipline to be taken as a  
2 result of that, that would be referred to -- if it was a  
3 Section 75 employee, that would be referred to labor  
4 relations.

5 A. Yes. That's correct.

6 Q. And if something happened at diversity management  
7 that referred to a management/confidential or  
8 provisional employee, that would then be sent to you --  
9 no.

10 That would go to human resources; am I right?

11 A. I am the director of personnel. I oversee the  
12 bureau of personnel, which is oftentimes referred to as  
13 human resources. We are the human resources office.  
14 It's called personnel.

15 Q. If someone wanted to take action against an  
16 employee of the Department of Correctional Services  
17 because of what happened in a diversity management  
18 investigation, that would come to your office.

19 MS. RUBINSTEIN: Objection.

20 BY MR. KEACH:

21 Q. If the employee -- excuse me, if the employee was  
22 a provisional employee.

23 A. If the diversity management conducted an

1 investigation and their findings were such that a  
2 provisional employee had conducted some misconduct or  
3 wasn't acting appropriately, then, yes, that would come  
4 to me because the employee would be provisional.

5 Q. What if it's a management/confidential employee,  
6 like someone who is in the role of associate  
7 commissioner, what would happen then?

8 A. Associate commissioners serve at the pleasure of  
9 the commissioner. So it probably wouldn't come to me.  
10 It would probably go to the commissioner or deputy  
11 commissioner for review. They would be permanent  
12 employees.

13 Q. Now, I'm in the process of wrapping this up. I'm  
14 just doing this so I can clarify what my understanding  
15 is, not because I want you to get into the particulars  
16 of these incidents.

17 But I know that there have been problems in the  
18 Office of the Inspector General of the Department of  
19 Corrections with sexual harassment in the workplace, and  
20 that individuals have retired or been demoted and the  
21 like.

22 Are you aware of that, just yes or no?

23 MS. RUBINSTEIN: Objection.

1                   THE WITNESS: I am aware that there  
2                   were some issues over there and people have  
3                   retired.

4 BY MR. KEACH:

5                   Q. What role, if any, did you play in addressing  
6 problems with the office of inspector general?

7                   MS. RUBINSTEIN: Objection.

8                   THE WITNESS: None.

9 BY MR. KEACH:

10                  Q. Would that have been handled by the commissioner  
11 or the acting commissioner?

12                  MS. RUBINSTEIN: Objection.

13                  THE WITNESS: I don't know.

14 BY MR. KEACH:

15                  Q. It's been represented in this case that personnel  
16 made the recommendation of the penalty that Mrs. Trostle  
17 should bear in terms of being returned to her hold item.

18                  Do you know anything about that?

19                  A. I guess I don't understand the question.

20                  Q. At the bottom of the memo from Mr. Botsford to  
21 Mr. Martuscello, it says that Mrs. Trostle should be --  
22 it's our recommendation that Mrs. Trostle be returned to  
23 the hold item.

1       A. Okay.

2       Q. Do you see that?

3       A. Yes.

4       Q. And it's been represented in this case by other  
5 deponents that personnel was the one that made the  
6 recommendation to return Mrs. Trostle to her hold item  
7 versus them accepting the recommendation of the  
8 supervisors.

9                  Do you know anything about that?

10       A. No. I mean, we would be -- personnel would be  
11 responsible for processing the termination of the  
12 provisional employee, and the employee would fall back  
13 to wherever their hold was. That's part of the process.

14       Q. So, I just want to be clear.

15                  To your knowledge, personnel wasn't the one that  
16 made that determination to send Ms. Trostle back to the  
17 hold item.

18       A. No. The recommendation of the termination came  
19 in the form of the memo here from Mr. Botsford to Dan  
20 Martuscello. The termination was processed. She was a  
21 provisional employee who was terminated from her  
22 provisional position. And she landed at where her  
23 permanent hold was.

1 Q. So, I just want to be clear. Before Mr. Botsford  
2 sent that memo to Mr. Martuscello, personnel wouldn't  
3 get involved at all, would it?

4 MS. RUBINSTEIN: Objection.

5 THE WITNESS: No. I mean, we'd be made  
6 aware of the situation by the manager of the  
7 area, the program manager of the area, the  
8 supervisor.

9 BY MR. KEACH:

10 Q. When you got the memo.

11 A. Right.

12 Q. You wouldn't get involved before the memo came  
13 out; fair to say?

14 A. There may be -- I mean, there may be a phone  
15 call. I don't know about in this situation, but there  
16 may be a situation where someone calls and says, we got  
17 this situation going on. We're preparing the  
18 documentation to send down to you for review and  
19 consideration of the termination, whatever. That often  
20 happens with facilities. Call and say, hey, we have a  
21 probationary employee who just --

22 Q. Isn't working out.

23 A. -- came in with a cell phone, say. We're

1 preparing documentation to send up to you for your  
2 review.

3 Q. Did Mrs. Trostle have an opportunity, when she  
4 was recommended for demotion from the position of  
5 assistant director, to return to being a classification  
6 analyst?

7 A. I don't know if she had an opportunity to do  
8 that.

9 Q. If that was also a provisional position at this  
10 time, would she have the ability to do that?

11 A. No. She'd only have a right to the permanent  
12 hold she had, the hold on her last permanent position.

13 Q. But would there be anything that would preclude  
14 her from being able to say, it's not working out with  
15 you as a supervisor, we're going to send you back to  
16 your position as a classification analyst, and you can  
17 work in the position now going forward, you're not going  
18 to be the supervisor anymore?

19 A. She'd have no rights to that. There may be other  
20 considerations. Maybe there wasn't a vacancy to  
21 consider, things like that. I don't know what the --

22 Q. But there wouldn't be any prohibition to that  
23 being done here as an alternative to sending her back to

1 her hold item, would there?

2 MS. RUBINSTEIN: Objection.

3 THE WITNESS: She didn't have any  
4 rights to that. But, yeah, I don't know. I  
5 don't know if anything would preclude her  
6 from going back to where she was serving  
7 provisional in one of those positions  
8 before.

9 BY MR. KEACH:

10 Q. Yeah. She was a provisional as a classification  
11 analyst, and then she became the assistant director.

12 So I'm just trying to figure out if -- let's  
13 assume that she wanted to be a classification analyst  
14 again, they had room for her, and she wanted to stay and  
15 work in central office for economic reasons.

16 There would be no prohibition to her doing that;  
17 fair to say?

18 MS. RUBINSTEIN: Objection.

19 THE WITNESS: No. I don't believe so.  
20 I mean, I don't know what the consideration  
21 would be. But, no, if she served  
22 provisionally in the title before, I don't  
23 see why she wouldn't have been able to serve

1 provisionally in the title again. But she  
2 didn't have a right to that, though.

3 MR. KEACH: I understand that.

4 I think that answers my question.

5 I don't have any more for you.

6 (Deposition concluded at 4:28 p.m.)

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1 STATE OF NEW YORK )

2 COUNTY OF

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4 I, DARREN AYOTTE, do hereby certify that I have read the  
5 foregoing record of my testimony taken at the time and  
6 place noted in the heading hereof and that it is a true  
7 and correct transcript of the same and the whole  
8 thereof.

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DARREN AYOTTE

14 Subscribed and sworn to

15 before me this \_\_\_\_\_ day

16 of \_\_\_\_\_, 2014

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1                   C E R T I F I C A T I O N

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4     I, Jeanne O'Connell, Registered Professional Reporter  
5     and Notary Public in and for the State of New York, do  
6     hereby certify that the foregoing to be a true and  
7     accurate transcription of the stenographic notes as  
8     taken by me of the aforesaid proceedings.

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11/10/14

Date

Jeanne O'Connell

Jeanne O'Connell

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# Errata Sheet

, have read the transcript of my testimony and would like the following changes:  
(Print name)

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Notary Public

**Signature**